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No. 08-54

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

C. THOMAS ROSS,

Petitioner,

v.

JOHN C. WHITAKER, JR.,
ELIZABETH N. WHITAKER, II,
and WILLIAM A. WHITAKER,

Respondents.

On Petition For A Writ Of Certiorari
To The Court Of Appeals Of North Carolina

BRIEF IN OPPOSITION

WILLIAM K. DAVIS
ALAN M. RULEY
Counsel of Record
MICHAEL D. PHILLIPS
BELL, DAVIS & PITT, P.A.
100 North Cherry Street, Suite 600
Post Office Box 21029
Winston-Salem, NC 27120-1029
Telephone: (336) 722-3700
Facsimile: (336) 714-4101

Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether the United States Supreme Court should grant a Writ of Certiorari to review an unpublished opinion by the North Carolina Court of Appeals containing an order sanctioning Petitioner under the North Carolina Rules of Appellate Procedure for filing a frivolous appeal, where the North Carolina appellate courts have previously dismissed all of Petitioner's subsequent appeals of such sanctions order.

STATEMENT OF THE CASE

This matter is before the Court upon the Petition of *pro se* Petitioner C. Thomas Ross ("Petitioner") for Writ of Certiorari to review the unpublished opinion of the North Carolina Court of Appeals in *Whitaker v. Whitaker*, No. COA06-465, 2007 WL 328807 (N.C. Ct. App. Feb. 6, 2007), *disc. rev. denied*, 646 S.E.2d 774 (N.C. 2007) ("*Whitaker III*"), in which sanctions were imposed against Petitioner pursuant to Rule 34 of the North Carolina Rules of Appellate Procedure for filing a frivolous appeal.

Petitioner is a former attorney of record for the original named Plaintiff in this action, Louisa B. Whitaker ("Ms. Whitaker").[1] The actual lawsuit underlying this Petition is a dispute of Ms. Whitaker with her three siblings over their mother's estate. The intra-family litigation has been ongoing in the North Carolina courts for nearly a decade and has given rise to nine appeals, attempted appeals, or appellate petitions in this and related litigation, and has so far resulted in three written opinions by the North Carolina Court of Appeals, culminating in

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[1] Although Petitioner has taken the liberty of recaptioning the case to insert himself as a named party to this action, since 2002, this case has been docketed as *Louisa B. Whitaker v. John C. Whitaker, Jr., Elizabeth N. Whitaker, II, and William A. Whitaker*. Petitioner has never been a party to this action. Rather, he is one of several attorneys who have represented Ms. Whitaker at various times during the course of this state court civil action.

Whitaker III. The Supreme Court of North Carolina, however, has consistently declined to hear any aspect of this litigation. The present Petition is the final unpleasant chapter in the long and tortured saga of this case.

In *Whitaker III*, which was an unpublished opinion without controlling precedential value, the North Carolina Court of Appeals once again ruled in favor of Respondents and additionally imposed sanctions jointly against Petitioner and Ms. Whitaker for filing a frivolous appeal in violation of Rule 34(a) of the North Carolina Rules of Appellate Procedure. The North Carolina Court of Appeals remanded *Whitaker III* to the trial court for a determination of the amount of reasonable attorneys' fees to be imposed as sanctions.

On March 8, 2007, Ms. Whitaker timely petitioned the Supreme Court of North Carolina for discretionary review of *Whitaker III*, asserting constitutional challenges to the sanctions order similar to those raised in the present Petition. Ms. Whitaker's Petition for Discretionary Review was denied by the Supreme Court of North Carolina on May 9, 2007.

However, unlike his former client, Petitioner did *not* timely petition the North Carolina Court of Appeals for rehearing of *Whitaker III*, and did *not* timely file notice of appeal or petition for discretionary review of *Whitaker III* with the Supreme Court of North Carolina.

Instead, Petitioner improperly waited for the matter to be remanded to the trial court for determination of the amount of attorneys' fees to be awarded as sanctions, and then began his belated attack on *Whitaker III* only after Ms. Whitaker, his former client, refused to pay the entire amount of the $15,992.50 in attorneys' fees that were jointly assessed as sanctions.[2]

On July 23, 2007, more than three months after the deadline for appealing *Whitaker III* had expired, Petitioner improperly filed Notice of Appeal with the North Carolina Court of Appeals, remarkably asking that Court to overrule its own opinion in *Whitaker III* on the same purported constitutional grounds that form the basis of the present Petition. Not surprisingly, on February 6, 2008, the North Carolina Court of Appeals summarily dismissed Petitioner's appeal.

On February 21, 2008, Petitioner filed Notice of Appeal and Petition for Discretionary Review with the Supreme Court of North Carolina, once again belatedly attempting to challenge *Whitaker III* on the same purported constitutional grounds that form the basis of the present Petition. On April 10, 2008, the Supreme Court of North Carolina summarily dismissed Petitioner's appeal and declined to allow discretionary review.

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[2] Ms. Whitaker subsequently paid over half of the attorneys' fees at issue, leaving less than $8,000 actually at issue in this Petition.

On July 9, 2008, having had all of his prior appeals dismissed by every appellate court in North Carolina, Petitioner filed the present petition, asking this Court to consider the constitutionality of sanctions that were imposed against Petitioner by the North Carolina Court of Appeals for procedural rules violations almost a year-and-a-half earlier in *Whitaker III*.

REASONS FOR DENYING THE PETITION

Petitioner has presented no compelling reason for the Court to grant Writ of Certiorari to review the February 6, 2007 unpublished opinion of the North Carolina Court of Appeals in *Whitaker III*, in which Petitioner and his former client were sanctioned for filing a frivolous appeal. The Petition does not raise any important questions of federal law. Rather, it is an attempted appeal from a procedural matter under state law that represents nothing more than a last-ditch effort by Petitioner to avoid modest sanctions that were properly imposed against him by the North Carolina Court of Appeals for filing a frivolous appeal.

Very simply, Petitioner originally violated the North Carolina Rules of Appellate Procedure by filing a frivolous appeal. He subsequently violated those same rules by failing to timely perfect his appeal of the sanctions order, resulting in back-to-back dismissals of his appeal at each level of the North

Carolina appellate courts. Repeated violations of state court procedural rules do not entitle a litigant to review in this Court. Accordingly, Respondents respectfully request that the United States Supreme Court deny the Petition for Writ of Certiorari.

This the 5th day of August, 2008.

WILLIAM K. DAVIS
ALAN M. RULEY
Counsel of Record
MICHAEL D. PHILLIPS
BELL, DAVIS & PITT, P.A.
100 North Cherry Street, Suite 600
Post Office Box 21029
Winston-Salem, NC 27120-1029
Telephone: (336) 722-3700
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